Brief of The Northwest Territories Legislative Assembly

To

Hearings of The House of Commons Standing Committee on Justice and Legal Affairs

On

Bill C-68
An Act Respecting Firearms

Monday, April 24, 1995, Ottawa

Northwest Territories Legislative Assembly

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Caucus Sub-Committee on Bill C-68

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Introduction

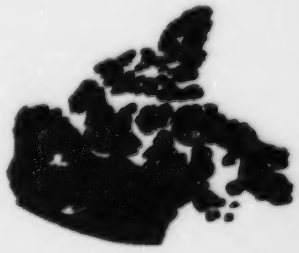
On February 14, 1995 the Honourable Allan Rock, Minister of Justice and Attorney General of Canada, introduced Bill C-68, an Act respecting firearms and other weapons. The Bill includes amendments to the *Criminal Code* and a proposed new *Firearms Act*. The legislation essentially reflects the intentions expressed in the consultation package released by the Government in December, 1994.

Minister Rock met with the members of our Legislative Assembly in the Fall of 1994, when we described unanimously and in no uncertain terms the unique features of the Northwest Territories and why firearms legislation designed for southern Canada will not work in the North. We were pleased that he listened to some of our advice. For example, provisions dealing with the purchase of ammunition on behalf of others are tailored for the northern reality. Regrettably, other features of Bill C-68 are totally out of step and clash with northern realities.

Consequently, the people of the NWT have expressed, and continue to express, deep concerns about the anticipated impact of Bill C-68. At the heart of these concerns there is a strongly held view that the proposed universal registration of firearms will lead to the criminalization of the way of life of otherwise law abiding citizens. There is also dismay over the restrictive impact of the regime on the treaty and aboriginal rights of aboriginal people in the NWT. Furthermore, those involved in commercial hunting and outfitting activities in the NWT are concerned that their unique interests will be negatively impacted.

Aboriginal people have expressed concern that the Government has failed to meet the criterion established by the Supreme Court in *R.* v. *Sparrow* in its effort to meet the valid objective of reducing unlawful firearms usage, but in a manner that least interferes with the aboriginal right to possess and use firearms to hunt for food.

The Government of the NWT is concerned about the constitutionality of the proposed regime and the cost and virtual impossibility of implementing and enforcing the regime in the NWT where there is a relatively small population dispersed across a huge geographical area. Policing and prosecutorial officials in the NWT have also expressed concerns about the efficacy of the proposed gun control regime contemplated by Bill C-68.



The Government of the Northwest Territories, which passed a unanimous resolution opposing Bill C-68 in its present form and mandating a committee to submit this brief, dreads the prospect of assuming responsibilities for the administration and enforcement of legislation which it does not support.

Background

There are approximately 60,000 residents in the Northwest Territories. Over half of these are persons of aboriginal descent. They inhabit a land mass which is roughly a third of Canada.

A 1990 survey of aboriginal households in the Northwest Territories disclosed that the vast majority of households were involved in hunting, fishing and trapping activities and owned rifles. Of these, 25 percent owned one rifle, 54 percent owned two to four rifles, and 22 percent owned five or more rifles.

We have 8 official languages, 6 of them aboriginal. The NWT has the highest incidence of illiteracy in Canada. It is estimated that 63 percent of the aboriginal population 15 years and over is not literate in English. Twelve percent of aboriginal people 15 years and over do not speak English or French well enough to carry on a basic conversation.

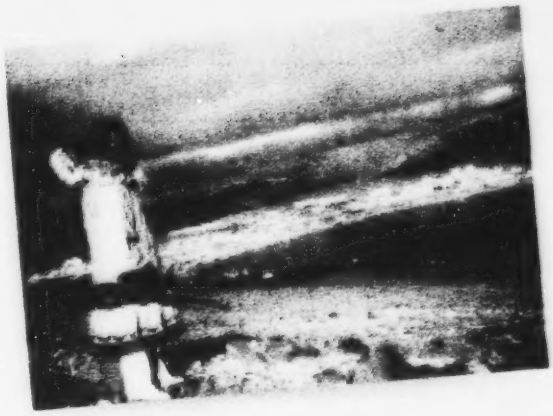
For most aboriginal people, hunting and trapping is central to their identities and remains economically, socially and culturally important, notwithstanding the damage done to the traditional economy by the anti-fur movement. Many continue to depend on hunting as a primary source of food, and for all native people wild meat is a preferred and nutritious source of sustenance, superior to the alternatives, which are prohibitively expensive.

Regulatory Compliance and the Northern Reality

There is a considerable amount of anecdotal evidence that Northerners, and Aboriginal Northerners in particular, because of unfamiliarity with regulatory regimes and their low literacy levels in English or French, will have relatively low compliance levels with the kinds of regulations that impinge on modern life. It is not unusual for aboriginal people, especially in remote communities, to find that they do not have the necessary driver's licence, because it has lapsed and not been renewed.

More relevant, is the example of the current firearms provisions of the *Criminal Code*, especially the provisions concerning the necessity for a Firearms Acquisition Certificate (FAC) and the safe handling and storage of firearms.

The evidence, again is anecdotal, but it is highly likely that full compliance with the requirements of the legislation is very low. It is proving difficult to enforce and implement the existing firearms legislation, yet the scope of the regulatory scheme in Bill C-68 is so much wider and more complicated.



On this basis alone, it is possible to predict a high level of non-compliance if Bill C-68 is passed in its present form. As for the penalties for non-compliance, however, the penalty for failing to renew a driver's licence or Firearms Acquisition Certificate is of an entirely different order from the penalties in Bill C-68 for possession of a firearm without the necessary permit or licence.

Registration of all Firearms

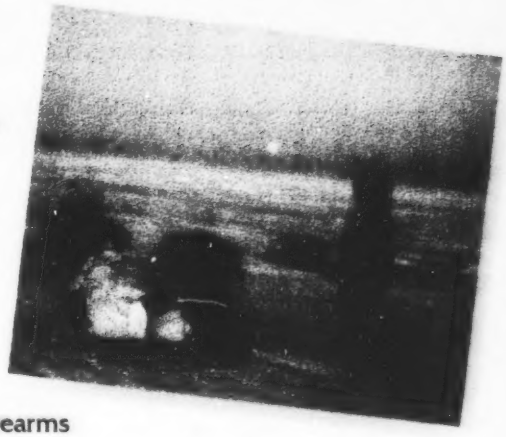
The proposed universal registration of firearms, and the severe penalties that result from a failure to comply with the regime, are the most troubling aspects of Bill C-68. Such a massive intrusion into the lives of people who are not criminals and for whom firearms are a part of a way of life simply cannot be justified. This is true for both aboriginal and non-aboriginal Northerners.

Northerners are particularly concerned about the penalties that could be imposed for possessing a firearm without a Firearms Registration Certificate (FRC) or Firearms Licence (FL) in Sections 91 and 92 of Part III of the *Criminal Code*. The penalties in Section 92 for knowingly possessing a firearm without the necessary certificate or licence are draconian. It is ironic that this should be an indictable offence, when far more serious offences under the *Criminal Code*, such as assault, are at least hybrid and capable of summary proceedings.

It is particularly severe and completely unwarranted to introduce mandatory minimum sentences for a second offence under Section 92. Serious injustices will inevitably result from such a regime: people will go to jail who should not be there.

The introduction of these penalties will also have a chilling effect on the enforcement of these provisions, by effectively removing the discretion of the police in cases of relatively innocent violations. The police will feel compelled to charge in all cases irrespective of the circumstances, because in introducing such a harsh regime, Parliament will be giving a clear message to the police, and the police will undoubtedly have concerns about the potential adverse reaction if something untoward were to happen subsequent to a decision not to charge.

Although the aboriginal people of the NWT are respectful of the law, renewal requirements and the importance that is placed on timely renewals, has little influence on daily activities. Due to this fact, the possibility of individuals failing to maintain a valid Firearms Licence is high. This will potentially result in a number of people who are normally law abiding citizens being charged for a criminal offence.



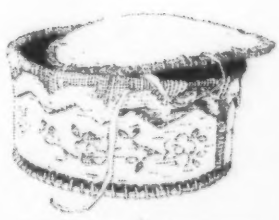
Lending and Storage of Firearms

Under the terms of this new legislation, an individual may lend a firearm to another person, but must transfer at the same time a Firearms Registration Certificate and ensure that the borrower holds a valid Firearms Licence. While this might make sense in large, urban centres, it is overly complicated and totally out of place in a wilderness or rural setting. If either party is knowingly not in possession of the required documents and the lending occurs, the individuals would be in violation of Section 92 of the *Criminal Code*. If found guilty, the individual could be sentenced up to a term of ten years for the first offence, and a mandatory minimum of one year for a second offence.

Section 32 (1) (b) of the proposed Firearms Act, allows for a person who has legal possession of a firearm, to lend it to a person who is not a holder of a firearms licence under the condition of direct and immediate supervision. The term "direct and immediate supervision" is not defined in the Act, leaving uncertainty as to how this provision will be applied. If, as Federal Justice officials have stated, the intention is for the supervisor to be within an arm's length distance from the user of the firearm it will create major problems for outfitters because it will force the ratio of hunter/guide to be one on one.

Outfitters feel that these and other features of Bill C-68 fail to appreciate the realities of how their business is conducted, and could have the effect of driving away regular clients. We believe that they are right.

In the Northwest Territories, breaches of these provisions are almost inevitable, because of the traditions of sharing firearms among aboriginal people. Culturally, it would be inappropriate to insist on proof of a Firearms Registration Certificate and/or Firearms Licence in good standing, or to refuse to share, or lend a firearm, in the absence of such proof. The lending of firearms in the North occurs in the same way as one would lend a shovel or an electrical tool in the South. It is very common for an individual to take a firearm from the home of a family member, or a friend without



the knowledge of the owner. These concepts may seem foreign to Southerners, but they are part of the reality of life in the North.

If caribou, whales or bears are present in the immediate area of a community, the necessity for the use of a firearm will take priority over the conditions placed on lending. If a decision has to be made between meeting the conditions in the new legislation, or knowingly violating them in order to ensure safety and a supply of food for the family, the choice will likely be simple.

The provisions on storage of firearms and ammunition will also be extremely difficult to enforce. Firearms that are used as part of a communal hunt will often involve a number of different individuals using the firearms. When not in use the firearms are stored in an accessible fashion in an open unsecured area. When camping on the land during a winter hunt, temperatures are constantly below freezing. For this reason, firearms are not taken inside of an igloo or a tent, because the action of the firearm will freeze if subjected to extreme temperature changes from warmth to cold when removed from the shelter, rendering it useless. Consequently, firearms are stored outside of the shelter. The firearm will more than likely be loaded and ready to use, due to the potential threat of polar bears or other predators.

Outfitting and Sports Hunting

Tourism is a growing but important industry in the NWT. Tourists are attracted by the northern wilderness, with its abundant wildlife. An increasing number of people earn a livelihood from outfitting and guiding sports hunters, many of them Americans, who pay a great deal of money for the privilege of hunting in our country. American sports hunting organizations have served notice that they are not prepared to live with the impact of Bill C-68, and hunters have been advised not to take their trade to Canada. If this results, the outfitting and guiding industry in the NWT will be severely damaged. Alaska awaits those who would go elsewhere.

The proposed legislation deals with non-residents who enter Canada for the purpose of hunting with a firearm, but it fails to address the area of non-residents entering Canada for the purpose of hunting who do not have a firearm. This will place the hunter under the restriction of being within the direct and immediate

supervision of a guide. Also, individuals under the age of eighteen will not be allowed to enter Canada with a firearm. This will not allow a father/son party to experience their first hunt without being placed under these restrictions. Confusion about the nature and scope of the proposed restrictions is already having a negative impact upon outfitting operations in the NWT.

Constitutional Issues

Under the Constitution, the Federal Government has responsibility for the Criminal Law. Provinces have responsibility for Property and Civil rights. The Northwest Territories Legislative Assembly under the *Northwest Territories Act* has most of the powers of a province, including legislative authority over Property and Civil rights.

A new *Firearms Act*, calling for the creation of a comprehensive regime of registration of firearms suspiciously resembles legislation passed pursuant to authority over Property and Civil Rights. Curiously, the registration regime is established under the umbrella of the proposed *Firearms Act*, but penalties for breaches, such as possession of a firearm without the necessary documentation, will be prescribed in the *Criminal Code*. Given the absence of empirical evidence demonstrating that the universal registration of firearms will have any impact on the reduction of crime rates, the authority of the Government of Canada to pass this legislation under its jurisdiction over the criminal law is questionable.

For us in the Northwest Territories the proposed legislation is particularly troubling in the context of the constitutional evolution of the Northwest Territories, and provokes mixed feelings. In Bill C-68, "Provincial Minister" for the Northwest Territories means the Federal Minister, which must surely be viewed as retrogressive. It is strange, to say the least, that the Federal Minister of Justice would be responsible for appointing a Firearms Officer in a small community in the Northwest Territories. That appears to be the direction suggested by the contents of Bill C-68.

While it is true that, to a much lesser extent, the current firearms provisions of the *Criminal Code* give the Federal Minister of Justice responsibilities in the territories that are elsewhere assigned to a Provincial Attorney General, the current constitutional anomaly is only amplified many times over in the proposed new regime.

Aboriginal Rights

The majority of firearms users in the Northwest Territories are aboriginal people. For aboriginal people, firearms are essential to their way of life, and have particular cultural importance to the exercise of their traditional rights as hunters. Aboriginal people will inevitably challenge this legislation as an excessive intrusion by the government into the exercise of their aboriginal rights to hunt. The *Sparrow* case in the Supreme Court of Canada establishes that the Government of Canada has fiduciary responsibilities respecting aboriginal people and the exercise of their harvesting rights, and identifies limits or conditions on the Government when legislating in ways which impact on those rights. Arguably, the proposed firearms legislation does not meet those conditions. *Sparrow* requires minimal interference with aboriginal rights. Bill C-68, by contrast, appears to be structured upon a foundation of severe interference.

Costs

We echo the observations of others to the effect that the costs of the new regime make it indefensible. The costs are particularly unsupportable given that the expected impact on crime prevention is speculative, while at the same time introducing, under the authority of jurisdiction over the criminal law, an extensive, regulatory intrusion by the State into the lives of people who are not criminals.

We have not completely assessed the increased costs to administer the proposed regime, but clearly they will be staggering. We will not be in a position to administer C-68, even if we wanted to, unless the costs are fully funded by the Federal Government.

Increases over the current regime include things like audits of firearms businesses, monitoring delivery of firearms safety training and inspecting shooting ranges and club activities, all of which will require travel, which is extremely expensive in a region with 60 communities scattered across 3.2 million square kilometres.

The most significant of the new duties is the implementation of S. 22, whereby the Chief Territorial Firearms Officer will authorize all transfers of firearms. This will be costly and virtually impossible to implement in a territory as vast as the NWT. Persons from remote parts of the NWT, proposing to transfer firearms, will need to communicate with the Chief Territorial Firearms Officer in Yellowknife if a transfer is to be authorized. The associated expenses are extremely disproportionate compared to what could be anticipated in similar transactions in the South.

We note that Section 26(c) implies that transfers will not be routine and will require an investigation by the Chief Territorial Firearms Officer before an authorization can be made. These investigations will be as extensive as those required to authorize the initial issue of a Firearms Registration Certificate or Firearms Licence. Cost and capacity stand as significant barriers to meeting these obligations. Furthermore, the establishment of Nunavut in 1999 will require additional resources at a time when resources are scarce.

An extensive public information campaign will be required to bring the full impact of the new legislation to the attention of the northern public, and will have to reflect that many people do not use written languages or do not read or understand English or French.

We also note that the Government of Canada has not yet concluded an agreement with the Government of the NWT for the costs of administering the current legislation. The additional duties under the proposed legislation will require the negotiation of an agreement covering the additional costs.

Firearms Training

The requirement for completion of a firearms safety training course before becoming eligible for the acquisition of a firearm is proving to be difficult to implement in the context of the existing firearms legislation, and demonstrates the central theme of the Northwest Territories position, that regional flexibility must be built into a national regime. The case for this is even stronger if the regime is to have complexities of an additional order, as in Bill C-68.

The Government of Canada and the Government of the NWT are currently attempting to develop an agreement which would allow for a training program which is appropriate to the circumstances of the NWT. We note, with some concern, that Bill C-68 calls for a "Canadian Firearms Safety Course". If this means national uniformity in training, it will not work in the NWT, because mandatory participation in a safety course designed for circumstances in Toronto, Montreal or Vancouver is not only excessively bureaucratic and expensive to administer, but oppressive and irrelevant. Aboriginal and other persons would be compelled to attend a course, which does not reflect the needs, or the realities, of subsistence hunters.

To be effective, courses must be designed for local circumstances, and take into account the literacy levels and use of aboriginal languages by the prospective students.

We are encouraged by the expressions of commitment from the Minister and his officials to accommodate regional and cultural flexibility in the implementation of the requirement for firearms training, but without a legislated expression of this commitment, we remain concerned.

Conclusion

The people of the NWT would be more than pleased to support legislation which would have the effect of reducing crime rates, but C-68 will not reduce crime rates in the NWT. Indeed, it will give criminal records to people who relatively innocently or out of conscience contravene the firearms legislation by failing to acquire the necessary licences and permits or register their weapons. We would be happy to support large urban centres in their bid for control over the illegal use of firearms, but we do not see why we should have to accept legislation which does not work for us, any more than we would expect people living in Toronto, Montreal and Vancouver to accept legislation designed for the NWT.

We are confident that it is possible to find a way to import flexibility and regional and cultural variations in the application of legislation such as this. We expect that there would be a lot of support for this from the Canadian public. While there is some room for the flexible implementation of C-68, the draft does not meet the standard that ought to apply in relation to legislation that can be expected to have a profound impact on the lives of those who will be affected by it.

Examples of legislated flexibility and sensitivity to regional and cultural diversity can be found elsewhere. Section 4 of the *Young Offenders Act*, which provides for the introduction of programs of alternative measures on a provincial basis is one such example. Similarly, a program of victim impact statements can be instituted on a provincial basis pursuant to Section 735 of the *Criminal Code*. Section 718.2 (c) of Bill C-41, the "Sentencing Bill" which is now before Parliament, will amend the *Criminal Code* to require a court to take into account the special circumstances of aboriginal people when deciding whether or not to sentence an aboriginal person into custody. Given the flexibility and sensitivity applied in these circumstances it is difficult to accept that it is not possible to achieve similar results in relation to matters which may not fall fully within the scope of the criminal law.

Serious consideration must be given to amendments to Bill C-68 which will allow for the Northwest Territories and other regions to adapt the implementation of firearms legislation by instituting programs to meet the objectives of the legislation, while respecting regional and cultural values and constitutionally protected rights. Programs should reflect that a firearms program on Baffin Island cannot and should not be the same as one designed for Toronto, Montreal, Vancouver or other urban centres. Firearms have a special place in the lives of the aboriginal people of the Northwest Territories. Many will have lived all or part of their lives on the land, dependent on firearms for survival, and for all aboriginal people firearms possess a cultural significance which is not shared by other Canadians whether they use firearms or not. Legislation which does not adequately take this into account is contrary to the standards of fairness and respect for diversity to which all Canadians attach the highest of value.

Canada's Northwest Territories